12-3-2014

State v. Karsten Appellant's Brief Dckt. 42154

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. SAMANTHA JO KARSTEN , (SISTRUNK) Defendant-Appellant.	NO. 42154 TWIN FALLS COUNTY NO. CR 2008-6923 APPELLANT'S BRIEF

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

HONORABLE RANDY J. STOKER
District Judge

SARA B. THOMAS
State Appellate Public Defender
State of Idaho
I.S.B. #5867

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247

SHAWN F. WILKERSON
Deputy State Appellate Public Defender
I.S.B. #8210
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

ATTORNEYS FOR
DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR
PLAINTIFF-RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF THE CASE

Nature of the Case

Samantha Jo Karsten (Sistrunk) timely appeals from the district court's order reducing her felony conviction to a misdemeanor conviction. On appeal, Ms. Karsten argues that the district court abused its discretion when it failed to set aside her guilty plea and dismiss her judgment of conviction.

Statement of the Facts and Course of Proceedings

When Ms. Karsten was twenty years old, she dated a man named Timothy Ferguson. (R., p.101.) One night, Ms. Karsten, Mr. Ferguson, and one of the couple's friends, Josh Schmitz, were bowling in Twin Falls, Idaho. (R., pp.11, 101.) The group wanted to return to their homes in Boise, Idaho, but did not have enough money to make the trip. (R., p.11.) Mr. Ferguson remembered that he had previously loaned Steve Weir some money so Mr. Weir could make a rent payment. (R., p.11.) The group decided to go to Mr. Weir's apartment and demand that Mr. Weir repay his debt. (R., p.11.) Mr. Ferguson told Ms. Karsten that he planned to threaten Mr. Weir in the event he refused to repay his debt. (R., p.11.)

Ms. Karsten was the only sober person in the group, so she drove the other two men to Mr. Weir's apartment. (R., p.101.) Ms. Karsten remained in the car while Mr. Ferguson and Mr. Schmitz approached Mr. Weir's apartment. (R., p.101.) While in the apartment, Mr. Ferguson and Mr. Schmitz threatened Mr. Weir with a gun and took $100, in addition to some other personal items, from Mr. Weir. (R., pp.10-12.) Ms. Karsten learned that Mr. Weir was threatened with a gun after Mr. Ferguson and

Mr. Schmitz returned to her car. (R., p.101.) Mr. Weir reported the incident to the police and Ms. Karsten was eventually arrested. (R., pp.10-12.)

Ms. Karsten was charged, by information, with aiding and abetting robbery. (R., pp.48-49.) Pursuant to a plea agreement, Ms. Karsten pleaded guilty to an amended charge of aiding and abetting aggravated assault and, in return, the State agreed to recommend probation. (R., pp.54-64, 67-68.) Thereafter, the district court imposed a unified sentence of five years, with three years fixed, but suspended the sentence and placed Ms. Karsten on a three-year period of probation. (R., pp.79-83.)

Over five years after Ms. Karsten was placed on probation, she filed a motion to set aside her guilty plea and dismiss her judgment of conviction. (R., pp.98-92.) In support of her motion, Ms. Karsten submitted an affidavit indicating that at all times she complied with the terms of her probation. (R., pp.101-102.) She also informed the district court that she had paid all of the fines and costs associated with this case. (R., p.102.) She told the court that she ended her relationship with Mr. Ferguson, married a different man, had two children, and was pregnant with a third child. (R., p.102.) She also told the court that the instant matter was her only criminal offense, and constituted behavior which was entirely out of her character. (R., p.102.) Ms. Karsten also told the court that in May of 2014 she was scheduled to graduate from Brown Mackie College, with a Medical Assistance Degree. (R., p.102.) Her defense counsel stated that her judgment of conviction will limit her employment opportunities in the medical industry. (R., p.99.)

A hearing was held on Ms. Karsten's motion, wherein Ms. Karsten argued pursuant to I.C. § 19-2604(1), that the district court had the authority to set aside her guilty plea and dismiss her judgment of conviction. (Tr., p.4, L.23 - p.6, L.15.) The

State disagreed and argued, based on the fact that her probation had expired, that the district court only had the authority pursuant I.C. § 19-2604(3) to reduce Ms. Karsten's conviction from a felony to a misdemeanor. (Tr., p.6, L.17 - p.7, L.13.) However, the State then stipulated to a reduction of Ms. Karsten's conviction from a felony to a misdemeanor. (Tr., p.7, Ls.2-8.)

The district court begrudgingly ruled as follows:

> THE COURT: Okay, here is the problem. I have ruled on this issue. I hope that I am wrong with my ruling. I'll say that to you. I said that when I made the ruling. I'll say it again and again. This is the most ridiculous statute that I've ever seen, but here is the problem. Earlier this last year the Idaho Supreme Court decided State versus Guess, and in a lengthy footnote Justice Eismann pointed out that the language of 19-2604(1) seems to say on its face that when the legislature used the language "the Court may, if convinced by a showing made there is no longer cause for continuing the period of probation," that you have to make the motion before probation expires. Makes no sense to me whatsoever. Logically judicially, fairness, but that's the way -- It was dicta. I admit it's dicta. The [S]upreme [C]ourt has never ruled on it. I have issued two opinions from this Court saying that if that's what the statute says, it's not my prerogative to amend it. I invited people to appeal. I invite you to appeal this case because I think the ruling I'm about to make makes no sense. But sometimes that's the way it goes.
>
> My interpretation is that probation has expired in this case; therefore, subsection (1) doesn't apply, subsection (3) does. State stipulated to a misdemeanor, I'll certainly grant that relief, but I can't grant the other relief. And again, please take this up. Can I say it more forcefully? Because I think we need to get an interpretation of the statute.
>
> . . . .
>
> I will reduce this case to a misdemeanor at this time without prejudice to your client to come back and to reconsider that in the event of a [holding] from the [S]upreme [C]ourt that I'm wrong. I think I can do that. In other words, it's without prejudice to file this motion again. If I'm wrong, then I'll grant the relief, because I have no doubt that Ms. Karsten has done very well and deserves the relief. I can't do it.

(Tr., p.7, L.17 - p.9, L.9.) Thereafter, the district court entered a written order comporting with the foregoing bench ruling. (R., pp.107-109.) Ms. Karsten timely appealed. (R., 111-113.)

ISSUE

Did the district court abuse its discretion when it failed to set aside Ms. Karsten's guilty plea and dismiss her judgment of conviction?

ARGUMENT

The District Court Abused Its Discretion When It Failed To Set Aside Ms. Karsten's Guilty Plea And Dismiss Her Judgment Of Conviction

A. Introduction

Ms. Karsten argues that I.C. § 19-2604(1) is ambiguous because there are two reasonable interpretations of that statute. The final paragraph of I.C. § 19-2604(1) provides, "the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest, terminate the sentence. . . ."[1] (emphasis added). Ms. Karsten argues that the comma followed by the word "and" sets off two separate clauses that are applicable under two different circumstances. The first clause, which contains the phrase "continuing period of probation," is available to a movant prior to the expiration of probation. *See State v. Guess*, 154 Idaho 521, 527 n.3 (2013). In order to obtain relief, such a movant has the burden of establishing that there is no longer cause for continuing probation. The second clause, which contains the language "if it be compatible with the public interest," is available to a movant after the expiration of probation. In order to obtain relief, such a movant has the burden of establishing that the relief is compatible with the public interest.

Ms. Karsten also recognizes that these two clauses could be read in conjunction and limit relief pursuant to I.C. § 19-2604(1) only to a movant who is currently on

---

[1] Idaho Code Section 19-2604 was amended by the legislature in 2014 and the new version of the statute was enacted on July 1, 2014, which was after the disposition of Ms. Karsten's motion to set aside her guilty plea and dismiss her judgment of conviction. (R., pp.107-109.) As such, this brief will reference the version of the statute that was applicable at the time of the disposition of her motion to set aside her guilty plea and dismiss her judgment of conviction.

probation. *Id.* Under that interpretation of the statute, the movant must establish that there is no longer cause to continue probation and that relief pursuant to I.C. § 19-2604(1) is compatible with the public interest.

Since there are two reasonable interpretations of this statute, it is ambiguous and the rule of lenity must be applied when interpreting I.C. § 19-2604(1). Moreover, from a policy perspective it make little sense for the legislature to afford a person whom was capable of completing probation without a violation less relief than a person whom has yet to complete probation. The reasoning being that the person who has completed probation and has not violated the terms of probation has provided more proof that s/he was truly rehabilitated and no longer poses a risk to society.

B. Standard Of Review

The ultimate determination of whether relief is available pursuant to I.C. § 19-2604 rests within the discretion of the trial court. *See State v. Shock*, 133 Idaho 753, 754 (Ct. App. 1999); *see also Walborn v. Walborn*, 120 Idaho 494, 500-501 (1991) (holding that the use of the word "may" as opposed to "shall" denotes a discretionary determination to be made by the trial court). "When a district court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court correctly perceived the issue as one of discretion, acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it, and reached its decision by an exercise of reason." *State v. Knutsen*, 138 Idaho 918, 923 (Ct. App. 2003).

Statutory interpretation is a question of law over which Idaho appellate courts exercise free review. *State v. Dunlap*, 155 Idaho 345, 361 (2013). The Idaho Supreme Court utilizes the following framework when interpreting a statute:

> The interpretation of a statute . . . must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written. A statute is ambiguous where the language is capable of more than one reasonable construction.

City of Sandpoint v. Sandpoint Independent Highway Dist., 139 Idaho 65, 69 (2003). In the event a statute is deemed ambiguous, the rule of lenity provides that criminal statutes must be strictly construed in favor of defendants. *State v. Anderson*, 145 Idaho 99, 103 (2008). Additionally, findings of fact will be upheld on appeal if they are supported by substantial and competent evidence. *State v. Hoyle*, 140 Idaho 679, 682 (2004).

C. The District Court Abused Its Discretion When It Failed To Set Aside Ms. Karsten's Guilty Plea And Dismiss Her Judgment Of Conviction

The district court ruled that under the plain language of I.C. § 19-2604(1), it did not have the discretion to provide Ms. Karsten the full relief she sought, because her probation had expired. (Tr., p.7, L.17 - p.9, L.9.) The district court abused its discretion, as it failed to recognize that it had the discretion to provide Ms. Karsten the full relief she sought pursuant to I.C. § 19-2604(1). Contrary to the district court's implicit ruling, I.C. § 19-2604(1) is an ambiguous statute because it can be read in a manner which does and does not empower the district court to provide relief after probation has expired. The applicable version of I.C. § 19-2604 provides:

> (1) If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that:
>
> > (a) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; or

> (b) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and during any period of probation that may have been served following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation;
>
> the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, **and** if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant or may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction. This shall apply to the cases in which defendants have been convicted and granted probation by the court before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

I.C. § 19-2604(1) (emphasis added).

The underlined portion of the last paragraph of I.C. § 19-2604(1), sets forth two circumstances under which relief is available because the use of a comma before the word "and" indicates that the two clauses function independently of each other. The first clause applies if the movant is currently on probation. The second clause applies if the movant's probation has expired. If the legislature intended both of the clauses to be an indivisible unit, then it would not have separated the two clauses with a comma. Further, reading the two clauses as an indivisible unit requires this Court to ignore the comma. As such, the use of the comma after the word "and" indicates that the first two clauses of the last paragraph of I.C. § 19-2604(1) signifies two separate circumstances under which relief is available.

Support for Ms. Karsten's position can be found in *K Mart Corp. v. Idaho State Tax Comm'n*, 111 Idaho 719 (1986). In that case, K Mart was challenging a use tax. *Id.* at 719-720. One of the arguments pursued by K Mart was the applicability of a

production exemption contained in a prior version of I.C. § 63-3622(d). *Id.* at 721. The version of I.C. § 63-3622(d), which was applicable in 1986 follows:

> 63-3622. Exemptions. There are exempted from the taxes imposed by this act the following:
>
> . . . .
>
> (d) Receipts from the sale, storage, use or other consumption in this state of tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed, mined, produced or fabricated for ultimate sale at retail within or without this state, and tangible personal property primarily and directly used or consumed in or during such manufacturing, processing, mining, farming, or fabricating operations by a business or segment of a business which is primarily devoted to such operation or operations, provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operation . . . .

I.C. § 63-3622 (emphasis added). The Idaho Supreme Court held that the use of the word "and" creates an exemption for two types of property, namely, property that becomes a component part of property sold at retail and property used or consumed in the production of property sold at retail. *Id.* at 721. The Court also held that the subsequent limitation clause that "businesses which is primarily devoted to such operation or operations" modifies both of the production exemption and the consumption exemption. *Id.* The Court treated the two clauses connected by a comma and the word "and" as two independent circumstances under which the tax exemption applies.

The holding from *K Mart* is useful in this matter because the final paragraph of I.C. § 19-2604(1) is substantially similar to the tax exemption statute, I.C. § 63-3622, which was analyzed by the Idaho Supreme Court in the *K Mart* Opinion. Both of the statutes contain two clauses which are separated by a comma then the word "and."

Both of the statutes have subsequent provisos which modify both of the separate clauses. As such, this Court should interpret I.C. § 19-2604(1), in the same manner that the Idaho Supreme Court interpreted the applicable version of I.C. § 63-3622 in the *K Mart* Opinion. Under such an interpretation, the first clause of the last paragraph of I.C. § 19-2604(1), provides relief to people who are still on probation and who can convince the trial court that probation is no longer necessary. After making that showing, the trial court has the discretion to do anything from terminating the sentence to dismissing the judgment of conviction. The second clause of the last paragraph affords the same relief to a person who was completed probation and proves that such relief is compatible with the public interest.

Support for Ms. Karsten's interpretation of the last paragraph of I.C. § 19-2604(1) can also be found in I.C. § 19-2604(1)(b). *See Sweitzer v. Dean*, 118 Idaho 568, 572 (1990) ("It is the duty of the courts in construing statutes to harmonize and reconcile laws wherever possible and to adopt that construction of statutory provision which harmonizes and reconciles it with other statutory provisions."). Idaho Code Section 19-2604(1)(b) contemplates that relief pursuant to I.C. § 19-2604(1) is available both during a period of probation and after probation has expired. The applicable version of I.C. § 19-2604(1)(b) follows:

> (b) The defendant has successfully completed and graduated from an authorized drug court program or mental health court program and during any period of probation that **may** have been **served** following such graduation, the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation;

I.C. § 19-2604(1)(b) (emphasis added). The use of the word "may" and the past tense word "served" after the phrase "any period of probation" is an indication that relief pursuant to I.C. § 19-2604(1) is available to a person who may or may not be on

probation after graduating from a specialty court program. Had the legislature intended relief to only be available to people who remain on probation after graduating from a specialty court, it would have used language indicating that a period of post-specialty court probation was a prerequisite for relief. For example, the legislature could have replaced "any" with "a" and "may" with "shall," *i.e.* "a period of probation that shall be served following such graduation." Such language would indicate that relief is only available pursuant to I.C. § 19-2604(1), if a period of probation was served after successfully graduating from a specialty court program. However, the legislature used language which suggests that relief is available pursuant to I.C. § 19-2604(1) if there is or if there isn't a period of probation following the graduation from a specialty court. In order to harmonize I.C. § 19-2604(1)(b) with the last paragraph of I.C. § 19-2604(1), this Court should hold that the district court had the power to set side Ms. Karsten's guilty plea and judgment of conviction even though her probation had expired.

Moreover, Ms. Karsten's interpretation of I.C. § 19-2604(1) makes sense from a policy perspective. One of the most basic sentencing considerations is the notion that one's past actions are the best evidence of that person's rehabilitative potential. It follows that the longer a person goes without violating the law or a term of probation, the more likely that person has truly reformed. It makes little sense to provide greater relief to a person that has done less to prove that s/he has truly reformed than the person who has done more to prove that s/he has truly reformed. However, by limiting relief pursuant to I.C. § 19-2604(1) only to those who have not completed probation would preclude relief for those who have gone a longer time without a probation violation and have, therefore, done more to demonstrate true rehabilitation. Ms. Karsten surmises

that is what the district court was contemplating when it said that, "This is the most ridiculous statute that I've ever seen." (Tr., p.7, Ls.20-21.)

Additionally, the district court's determination that it is in the public's interest to afford Ms. Karsten the maximum relief available under I.C. § 19-2604(1) was supported by substantial and competent evidence. The district court was very clear that it wanted its ruling to be overturned on appeal because it had "no doubt that Ms. Karsten has done very well and deserves" more relief than a reduction of her felony to a misdemeanor. (Tr., p.9, Ls.1-9.) At all times, Ms. Karsten complied with the terms of her probation and paid all of her fines and fees. (R., pp.101-102.) The instant offense is Ms. Karsten's only criminal conviction and, as such, was a deviation from her otherwise law abiding character. (R., pp.101-102.) Ms. Karsten also ended her relationship with Mr. Ferguson, married a different man, had two children, and, at the time she filed her motion to set aside her conviction, was pregnant with a third child. (R., p.102.) Ms. Karsten was also about to graduate from Brown Mackie College, with a Medical Assistance Degree. (R., p.102.) Her defense counsel also stated that her judgment of conviction will limit her employment opportunities in the medical industry. (R., p.99.) As such, the district court's determination that it would be compatible with the public interest to set aside Ms. Karsten's guilty plea and dismiss her judgment of conviction was supported by substantial and competent evidence.

In sum, the last paragraph of I.C. § 19-2604(1) is ambiguous because it could be interpreted in manner which allows a district court to provide relief after the period of probation has expired. It could also be interpreted to mean that relief is only available before probation has expired. Since the statute is ambiguous, the rule of lenity applies and the statute must be interpreted in Ms. Karsten's favor. Moreover, it makes little

sense to deny someone like Ms. Karsten the maximum relief available under I.C. § 19-2604, because she successfully completed her probation. In fact, the district court reluctantly denied Ms. Karsten the relief she requested, invited her to appeal, and pointed out that its ruling in this matter "makes no sense." (Tr., p.7, Ls.17 - p.9, L.9.)

CONCLUSION

Ms. Karsten respectfully requests that this Court remand this matter for further proceedings with instructions that her guilty plea be set aside and her judgment of conviction be dismissed.

DATED this 3rd day of December, 2014.

SHAWN F. WILKERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

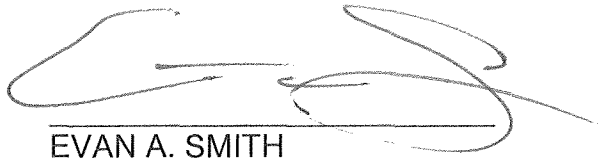
I HEREBY CERTIFY that on this 3rd day of December, 2014, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

SAMANTHA JO KARSTEN
11840 WEST VIOLA DRIVE
BOISE ID 83713

RANDY J STOKER
DISTRICT COURT JUDGE
E-MAILED BRIEF

J SCOTT ANDREW
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010
Hand delivered to Attorney General's mailbox at Supreme Court.



EVAN A. SMITH
Administrative Assistant

SFW/eas